IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NOs : 10265 & 12700 of 2004

WRIT PETITION NO : 10265 of 2004

Between:

Poosala Ramachandram S/o Sailu, aged about 52 years,
Teegalaguttapally(Vill&Mdl) Karimnagar District

..... PETITIONER

AND

1 The Divisonal Forest Officer Karimnagar West Division,
Karimnagar District.
2 Conservator of Forests, Warangal Circle,
Warangal Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly a writ in the nature of Mandamus declaring the proceedings in Rc.No.460/98/S-6 dt. 27/04/2004 issued by the Division Forest Officer, Karimnagar West-the 1st respondent herein and the proceeding in Rc.No.3130/2004/M-12 dated 19-04-2004 issued by the Conservator of Forests, Warangal Circle-the 2nd respondent herein as illegal, arbitrary and violative of articles 14,19(1)(g) and 21 of the Constitution of India and consequently direct the 1st respondent herein to transfer the license in favour of the petitioner and grant the permission to shift the saw mill from Bejjanki Village & Mandal, Karimnagar Dist to Teegalaguttapally Village of karimnagar Mandal & District forthwith.

Counsel for the Petitioner:MR.K.RAJA REDDY

Counsel for the Respondents: GP FOR FORESTS

AND

WRIT PETITION NO : 12700 of 2004

Between:

Aligeti Laxminarayana, S/o.Bhoomaiah, aged 35 years,
R/o.Choppadandi village & Mandal, Karimnagar Dist.

..... PETITIONER

AND

The Divisional Forest officer, Karimnagar (West),Karimnagar Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly a writ in the nature of Mandamus declaring the proceedings in Rc.73/98/S6 dated 3-6-2004 issued by the Divisional Forest Officer, Karimnagar (West) as illegal, arbitrary and violative of Articles 14 19(1)g and 21 of the Constitution of India and consequently direct the respondent herein to transfer the licence in favour of the petitioner and grant permission to shift the saw mill from within Choppadandi village in Sy.No.235/B, Choppadandi Mandal, Karimnagar District forthwith.

Counsel for the Petitioner:MR.K.RAJA REDDY

Counsel for the Respondent: GP FOR FORESTS

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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Writ Petition Nos.10265 & 12700 of 2004

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COMMON ORDER:

Since the common question involved in these two Writ Petitions, they are being taken up together for disposal.

2. The petitioner in W.P.No.10265 of 2004, who claims to have purchased a saw mill from the previous owner, filed this Writ Petition, inter alia, seeking writ of Mandamus challenging the correctness of the orders passed by the 1st respondent dated 27-04-2004, rejecting the request of the petitioner for transfer of ownership and licence and shifting permission for the said saw mill from existing place to another place.

3. Heard Sri K.Raja Reddy, the learned Counsel appearing on behalf of the petitioner, and the learned Government Pleader for Forest.

4. The petitioner, who claims to have an experience in the operation of saw mill and having worked as wood cutter in several saw mills, stated that he has purchased the existing saw mill, which is running under the name and style of M/s.Mahendra Saw Mill at Bejjanki Village & Mandal in Karimnagar District, from the previous owner Sri P.Gopal Reddy, and the said mill has been in existing since the year 1983 and the licence is being renewed till date. He further stated that saw mill is situated beyond 5 kms. from the forest area and he purchased the saw mill on payment of substantial consideration. Since the petitioner resides at Teegalaguttapalli village, which is adjacent to Karimnagar town, he sought by way of an application on 22-12-2003 for transfer of licence of the said saw mill and to accord permission to shift the saw mill from existing place Bejjanki to Teegalaguttapalli village in plot Nos.11,12,13 and 14 in Sy.No.278/B. Along with the application, he has filed no objection from the previous owner and also copy of the sale deed and other relevant documents. However, the said request was rejected under the impugned orders dated 27-04-

2004 by placing reliance on the instructions of the Principal Chief Conservator of Forests in Circular No.5/89, dated 17-05-1989 and also keeping in view of the principles laid down by the Supreme Court in W.P.No.202 of 1995 dated 16-11-2002. According to the petitioner the said order of rejection is merely based on the instructions of the Principal Chief Conservator of Forests, whereas neither of reasons shown, does not prohibit the transfer of shifting of saw mill from one place to another. It was submitted that even the existing location of the saw mill and the proposed location of saw mill both are far beyond 5 kms. from the forest area and therefore there cannot be any impediment in considering the petitioner's request. It is further submitted that there is no prohibition, much less any bar for shifting a saw mill. However, it has been stated by the respondents in the said order that in view of the shifting, the petitioner has to apply for fresh licence, which is not correct. The petitioner is only seeking shifting of the existing licence to a new location, for which there is no bar or any restriction. Hence, the Writ Petition.

5. In the Counter-affidavit filed by the respondent No.1 herein it is stated that the petitioner filed the application on 22-12-2003 seeking for transfer of the licence and for according shifting permission of the saw mill from the existing place in Bejjanki Village to proposed place at Teegalaguttapally village. Thereafter, on the basis of report submitted by the concerned Forest Range Officer, proposals have been submitted to the Conservator of Forests, Warangal Circle, Warangal, as per proceedings dated 25-03-2004 for necessary action. In reply, the Conservator of Forests, Warangal Circle, Warangal by letter dated 19-04-2004 it was pointed out that as per the Circular No.5/89 dated 17-05-1989 whenever an existing saw mill is shifted to a new location, the licence granted would not be valid for the new location. The sawmill owner in such cases has to apply afresh for saw mill licence before shifting the venue. Further, the observations made by the Hon'ble Supreme Court in W.P.No.2002 of 1995 dated 16-11-2002 has to be adhered to. Therefore, the petitioner's application was rejected for shifting of the sawmill from the existing place. Hence, there are no merits in the above Writ Petition and the same is liable to be dismissed.

6. In another Writ Petition No.12700 of 2004 the petitioner is seeking the similar such relief challenging the orders dated 03-06-2004, wherein the petitioner's request for transfer of licence and shifting permission were rejected. In that case, the petitioner had purchased the existing saw mill, known as Sri Venkateshwara Saw

Mill from one Ponnala Sambaiah, who has been holding the licence since the year 1978 and which is being renewed upto 31-12-2004 and accordingly the petitioner had made an application for transfer of ownership and also for shifting the saw mill from existing place at Choppadandi to Survey No.235/B in an extent of 0.06 guntas at Choppadandi Village and Mandal itself. The respondents have rejected the request on the same grounds, as pointed out in the above writ petition.

7. The learned Counsel for the petitioners in both the Writ Petitions primarily contended that under the provisions of the Andhra Pradesh Saw Mill (Regulation) Rules 1969, which has been framed under Section 29 read with Section 68 of the Andhra Pradesh Forest Act, 1967, there is no prohibition against the shifting of an existing saw mill and therefore the impugned orders are totally vitiated. The learned Counsel sought to place reliance on the decision of this Court in DIVISIONAL FOREST OFFICER, ADILABAD DIST. v. SREE VENKATESWARA SAW MILLS.

8. The learned Government Pleader for Forest, appearing on behalf of the respondents herein, strenuously opposed the request of the petitioners in both the writ petitions and also the contentions advanced through their counsel and after stating that having regard to the specific provision under the aforesaid rules, the petitioners' request in both the Writ Petitions cannot be considered as it virtually amounts to granting of fresh licence.

9. Considering the submissions made and also on perusal of the material, the question which falls for consideration is, whether on the facts and circumstances, the request of the petitioners in both the writ petitions for transfer and for shifting of the existing saw mill to another place is valid. There is no dispute to the fact that in the Writ Petition No.10265 of 2004, the petitioner had purchased the existing saw mill, which is running in the name and style of M/s.Mahendra sawmill, situated at Bejjanki Village and Mandal, from one Mr.P.Gopal Reddy on payment of substantial consideration of Rs.65,000/- and sale was affected in his favour. Thereafter, the petitioner has filed the present application 22-12-2003 seeking for transfer of ownership of the said saw mill and also for shifting of the said saw mill to his place at Teegalaguttapally village, which is nearer to Karimnagar town and to be located in Plot Nos.11 to 14 in Sy.No.278/B. However, the said request was rejected under the impugned orders on the ground that it is contrary to the instructions issued in circular No.5 of 1989 dated 17-05-1989 and also stating that keeping in view of the principles laid down by the Supreme Court in W.P.No.202 of 1995 dated 16-11-

2002, the request of the petitioner cannot be considered. There is also no dispute to the fact that the petitioner in W.P.No.12700 of 2004 had purchased the existing saw mill, which is known as Sri Venkateshwara Sawmill, situated at Choppadandi from one Ponnala Sambaiah. Thereafter, the petitioner has filed the present application for transfer of ownership of the said sawmill and also for shifting of the said saw mill from the existing place at Choppadandi to Survey No.235/B in an extent of 6 guntas at Choppadandi itself. However, the said request was rejected under the impugned orders on the same grounds as pointed out in the above writ petition.

10. The main ground on which the respondents sought to base their rejection is that any shifting virtually warrant a fresh licence and therefore the petitioners' request in both the writ petitions cannot be considered. Even otherwise as contemplated under Sub Rule 4 of Rule 5, without prior approval of the licensing authority, there cannot be any such shift. Before going into the questions, it is relevant to note the procedure as contemplated under the Andhra Pradesh Saw Mills (Regulation) rules 1969. Under Rule 3(1), no person shall install, erect or operate a Saw Mill for cutting, converting or sawing of timber without obtaining a licence for such installation from the licensing authority. Under Rule 3(2), no licence for setting up fresh saw mills within a distance of 5 kms. from the boundary of any Forest under the control of the Forest Department whether notified or not shall be granted, except when it is required for Departmental use. The procedure for seeking a licence is contemplated under Rule 4(1)(a) that any person desiring to install, erect or operate a saw mill shall make an application in Form-I along with the required other documents and also the payment of fee. Under Sub Rule 2 of Rule 5, there is a bar for affecting any transfer of such licence. Under sub-rule 2 of Rule 5 there is a bar for affecting any transfer of such licence. Under sub Rule 3 of Rule 5 again there is bar against any lease by the licencing holder in favour of the 3rd party without intimation of the licensing authority. Further under Sub Rule 4 of Rule 5 it is contemplated that where the sawmill premises are required to be changed or the machinery is to be shifted from one place to another within the same forest division, such changes should not be done without prior approval of licensing authority. Thus, on a reading of the entire aforesaid rules it becomes clear that necessarily a saw mill has to be established and run on the licence issued under the aforesaid rules and for every change either by way of shifting or lease etc., there is requirement of intimation and also prior

approval of licensing authority.

11. In DIVISIONAL FOREST OFFICER's case (1 supra), the decision cited on behalf of the petitioner, a Division Bench of this Court was considered Rule 3(2) of the aforesaid regulations. It was a case where a request was sought to be made for shifting of the saw mill from existing place to a new location both of which admittedly falls within 5 kilometer radius of reserve forest boundary and therefore considering the same it was held that the said provision applies only for a fresh saw mill, but not shifting of the existing saw mill. However, this Court has reiterated by making referece to sub Rule 4 of Rule 5 that undoubtedly an existing saw mill could be shifted to another location within the same forest division but only after prior approval of the licensing authority. Therefore, the said decision cannot be made applicable to the facts of this case. Since in these cases, the petitioners' request primarily consists of change of ownership and also shifting of premises from one place to another. It is not the case of the petitioners in both the writ petitions that they sought any approval from the licensing authority for effecting the change of place. The only request made by the petitioners in both the writ petitions straightaway was for effecting the transfer and to shift, which cannot be done in one stroke. As already submitted the respondents herein ought to have considered the petitioners' case in both the writ petitions for effecting change of transfer in favour of the respective petitioners in regard to the existing place and then directing the petitioners to apply for effecting change, subject to obtaining the prior approval of licensing authority. As rightly pointed out on behalf of the respondents herein even on the facts of these cases, though the request of the petitioners is only for effecting change of place, but however, virtually the petitioners in both the writ petitions are trying to locate and establish the mill in a totally different place. The licence for running a saw mill runs with the land and therefore which cannot be separated as such. In view of the same, it has to be held that though the petitioners are entitled for affecting the transfer of ownership of the existing rice mill, but however, there is no illegality in rejecting the petitioners' request for shifting of the saw mill to a different place.

12. The Writ Petitions are, accordingly, allowed only to the extent of setting aside the impugned orders and directing the respondents to effect the change of ownership in respect of existing saw mills with liberty to the petitioners in both the writ petitions to take steps for applying a fresh representation for shifting of the saw mill to the required place, subject to obtaining the prior approval from the licensing authority as

contemplated under the aforesaid rule.

13. The Writ Petitions are, accordingly, partly allowed. No costs.

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B.PRAKASH RAO, J.

Dated 16-08-2004.

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To

1 The Divisonal Forest Officer, Karimnagar West Division,
Karimnagar District.
2 Conservator of Forests, Warangal Circle,
Warangal District.

3. 2CCs to G.P. for Forest, High Court of A.P., Hyderabad,(OUT).

4. 2CD copies